

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Streetlight Dispute by Towns of)
Franklin and Swampscott,) D.T.E. 03-98
Contesting Purchase Price Prepared by)
Massachusetts Electric)

Motion to Re-open Hearing

Pursuant to the provisions of 220 CMR 1.11 (8), the Petitioners make this motion to re-open the hearing in the above captioned proceeding.

220 CMR 1.11 (8) provides as follows: No person may present additional evidence after having rested nor may any hearing be re-opened after having been closed, except upon motion and showing of good cause. Such motions shall be filed in accordance with provisions of 220 CMR 1:04(5).

There is Good Cause to Re-open the Hearing

The Town of Franklin has been denied the opportunity to present the testimony of its principal witness, Mr. Jeff Nutting, the Town Administrator of Franklin. While it is true that Mr. Nutting was unavailable on the first two days of the Hearing, he was present and available on the third day. He had submitted pre-filed testimony prior to the deadline set by the Hearing Officer for filing that pre-filed testimony, which was Friday, March 5, 2004 at 5 PM. As the Hearing Officer indicated after the lunch break on Monday, March 8, 2004, after taking into consideration the arguments advanced by the Petitioners and the Company, he was prepared to rule that Mr. Nutting could testify.

Unfortunately, Mr. Nutting had already left at the time the Hearing Officer announced that he was prepared to let Mr. Nutting testify. Mr. Nutting left, because we were told in the morning bench conference that it was Mass Electric's turn to present Mass Electric's witnesses, and that unfortunately Mr. Nutting would have to return on a

subsequent day, after the examination and cross examination of Mass Electric's witnesses was completed, in the event the Hearing Officer ruled in favor of the Petitioners on this matter.

Immediately following the Monday morning March 8, 2004 bench conference, Mr. Nutting was informed that he was free to leave, because he wouldn't be testifying on Monday, March 8, 2004. He remained as an observer during the morning session, and then left at lunch-time, approximately 30 minutes before the Hearing Officer announced that he was prepared to let Mr. Nutting testify, out of turn, that afternoon.

If there was good cause to allow Mr Nutting's testimony on Monday, March 8, 2004, there should be the same good cause to allow him to testify now.

Mr. Nutting's testimony deals with two of the issues that are central to this dispute. Those two areas of testimony are as follows:

1) Factual due diligence conducted by Mr. Nutting regarding the application of D.T.E. 01-25 in other communities:

Mr. Nutting's testimony deals directly with the due diligence undertaken by Mr. Nutting to review and compare the purchase price formula and purchase price results used by Mass Electric in Franklin, which the Company maintains was mandated by the Department's ruling in D.T.E. 01-25, to the D.T.E. 01-25 purchase price formula and D.T.E. 01-25 purchase price results used by Boston Edison in other Massachusetts communities, following the ruling in D.T.E. 01-25. There is a stark contrast between the purchase price method and purchase price results that Mass Electric maintains were mandated by D.T.E. 01-25 in Franklin and Swampscott, and the purchase price method and purchase price results that were applied to these other post D.T.E. 01-25 communities.

Mr. Nutting's testimony deals directly with the D.T.E. 01-25 methods as applied in other communities, which are different from the methods the Company maintains were mandated by D.T.E. 01-25 in Franklin. Mr. Nutting's testimony deals with the D.T.E. 01-25 book values for streetlight sale purposes and the book value tax purposes in other communities, as compared to the D.T.E. 01-25 book value for streetlight sale purposes and the book value for tax purposes in Franklin. The Company maintains that D.T.E. 01-25 mandated a changed formula that results in the \$100,000 increase over tax book value in Franklin. Mr. Nutting's testimony deals with the fact that there was no such formula mandated by D.T.E. 01-25 and no such increase mandated by DTE 01-25 in the streetlight book value sale price over and above the tax book values in other communities. The Company's initial explanation for this result had to do with the impact of using Franklin-specific, as opposed to service territory wide, retirement data.

Since the Company has now testified that the streetlight sale book value in Franklin and the streetlight tax book value in Franklin are both based on Franklin-specific retirements, it is important to get to the bottom of this discrepancy. Mr. Nutting's testimony will assist in that regard.

We can understand the reasons why the Company may wish to prevent this testimony from being heard. Those happen to be the same reasons that the Department should re-open the hearing, so that this testimony can be heard.

2) Comprehensiveness of the Town's due diligence regarding the portion of the post sodium conversion that can be reasonably attributed to the Town:

The Company has challenged the comprehensiveness of the Town's due diligence regarding the portion of the post conversion activity that could be reasonably allocated to the Town. In the Company's cross examination of the Franklin DPW Director from pages 234 through 239 of the transcript, the Company is asking a witness that had not seen the entire Brite-Lite report to answer questions about the comprehensiveness of the information contained in that report. Mr. Nutting has not only seen the Brite-Lite report, his pre-filed testimony includes that entire report as an exhibit in his testimony. He can testify directly to the comprehensiveness of that report in counting the number of capital replacement events that have been experienced on the *municipal portion* of the streetlight inventory in the four reference communities.

In addition, there was considerable confusion regarding the intended use of the Brite-Lite study. Following the examination and cross examination of Mr. Curran, the President of Brite-Lite Electrical, the Hearing Officer asked one question at page 41 of the Hearing Transcript:

Q. "Do you have any direct knowledge of what the costs of maintaining these lights in Franklin and Swampscott would have been to MECO, any first hand direct knowledge of what their costs were?"

A. Of their particular costs?

Q. Yes.

A. No. It's only determined by my own ...

Mr. Stiefel: That's all I have.

The above described exchange between the Hearing Officer and Mr. Curran is an example of the confusion regarding the Town of Franklin's use of the Brite-Lite study.

Mr. Nutting's testimony relates to the precise use of that study by the Town of Franklin to complete the due diligence in Franklin. The Brite-Lite study was not used to estimate total maintenance cost of Mass Electric in Franklin since the sodium conversion. The Brite-Lite study was not used to estimate total capital cost incurred by Mass Electric in Franklin since the sodium conversion. The Brite-Lite study was used only to make an allocation between the municipal and private capital additions activity following the sodium conversion in Franklin, because the Company could not provide any data on that allocation issue. Mr. Nutting should be given the opportunity to clear up the confusion, on the record, regarding this matter.

Fundamental Fairness

The Town Administrator of Franklin, the principal witness for that community, should be given the opportunity to present his testimony and describe the factual due diligence undertaken by that community, on the two above described issues, for reasons of fundamental fairness. Franklin should not be denied the opportunity to present the evidence of its principal witness because the Hearing Officer changed his mind regarding the timing of that that testimony.

The testimony of Mr. Nutting is relevant to the central issues in this dispute

While there is some evidence already on the record regarding excerpts from the Brite-Lite study, the report itself is not on the record, and the record is confusing regarding this matter. Mr. Nutting could clarify that confusion, on the record, in a matter of minutes.

The evidence regarding the factual due diligence of Franklin with respect to the actual application of the D.T.E. 01-25 ruling (in terms of the D.T.E. 01-25 purchase price formula applied and the D.T.E. 01-25 purchase price results obtained) in other surrounding communities, is not on the record and is very relevant.

If the application of the D.T.E. 01-25 ruling did not mandate a price increase, or a change in method from the prices and methods used by BECO before and after that ruling, the important question for the Department is: "Why is the D.T.E. 01-25 ruling as applied by Mass Electric, creating a change in method that results in a \$118,000 increase in the purchase price in Franklin?"

Similarly, if the actual application of the D.T.E. 01-25 ruling in other communities did not mandate any increase in the book value for streetlight sale purposes as compared to the book value for property tax purposes in those other communities, the important question for the Department that goes straight to the heart of this dispute, is: "Why is

the application of the D.T.E. 01-25 ruling, as applied by Mass Electric, mandating a \$112,000 increase over the tax book value price in Franklin?”

Mr. Nutting’s testimony provides very relevant evidence, which is not already on the record, that could greatly assist the Department in answering these two questions.

For the reasons stated above, the Petitioners respectfully request the re-opening of the hearing for the limited purpose of allowing the Town Administrator of Franklin to testify.

Submitted on behalf of the Petitioners on March 10, 2004 by:

John Shortsleeve
Attorney for the Petitioners